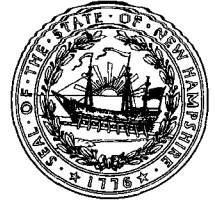




The State of New Hampshire  
**Department of Environmental Services**



**Michael P. Nolin**  
Commissioner

N.E. Atwater Morin, LLC  
18 Cheshire Circle  
Gilford, NH 03249

Tracy D. & Vickie M. Atwater  
14 Cheshire Circle  
Gilford, NH 03249

Terry D. Atwater  
P.O. Box 21  
North Oxford, MA 01537

JLM Builders of Hampton, LLC  
20 Birch Road  
Hampton, NH 03842

Re: 14 & 18 Cheshire Circle, Gilford, NH  
Wetlands File Nos. 2005-993/996.

**ADMINISTRATIVE ORDER**  
**No. WD 06-028**

July 5, 2006

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to N.E. Atwater Morin, LLC, Tracy D. & Vickie M. Atwater, Terry D. Atwater, and JLM Builders of Hampton, LLC pursuant to RSA 485-A:22 and RSA 482-A:6. This Administrative Order is effective immediately upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. N.E. Atwater Morin, LLC is a New Hampshire limited liability company listed as "Not In Good Standing" by the New Hampshire Office of the Secretary of State having a mailing address of 18 Cheshire Circle, Gilford, NH 03249.
3. Tracy D. & Vickie M. Atwater are married individuals having a mailing address of 14 Cheshire Circle, Gilford, NH 03249.
4. Terry D. Atwater is an individual having a mailing address of P.O. Box 21, North Oxford, MA 01537.

5. JLM Builders of Hampton, LLC is a New Hampshire limited liability company having a mailing address of 20 Birch Road, Hampton, NH 03842

### C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, the Department of Environmental Services regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.

2. RSA 482-A:3, I, states that "No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."

3. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, the Commissioner of DES has adopted Env-Ws 415 to implement this program.

4. Tracy & Vickie Atwater are the current residents of the property located at 14 Cheshire Circle in Gilford, more particularly described on the Gilford Tax Map 253 as Lot 129 (hereinafter "Lot 129").

5. Terry D. Atwater purchased Lot 129 on August 6, 2003 from N.E. Atwater Morin, LLC.

6. State of New Hampshire Secretary of State Corporate Division records indicate that N.E. Atwater Morin, LLC is currently not in good standing. Records indicate that Tracy Atwater is the sole member of N.E. Atwater Morin, LLC.

7. JLM Builders of Hampton, LLC (hereinafter "JLM") is the current owner of property located at 18 Cheshire Circle in Gilford, more particularly described on the Gilford Tax Map 253 as Lot 130 (hereinafter "Lot 130").

8. Lot 130 was purchased as a foreclosure by JLM on March 29, 2006. The previous owner, Christopher Bouchard, purchased Lot 130 also as a foreclosure on April 14, 2005 from Tracy D. Atwater and Vickie M. Atwater. Lot 130 was purchased by Tracy and Vickie Atwater on April 29, 2003 from N.E. Atwater Morin, LLC.

9. Lot 129 and Lot 130 are collectively referred to hereinafter as "the Properties."

10. Town of Gilford records indicate that in the fall of 2002, N.E. Atwater Morin, LLC submitted two construction permit applications to the Town of Gilford to build houses on the Properties. The applications indicated that the owner and general contractor was N.E. Atwater Morin, LLC.

11. Town of Gilford Code Enforcement records also indicate that construction approval was

granted based on the condition that N.E. Atwater Morin, LLC, as the current owner of the Properties, would be responsible for road construction and future road maintenance for access to the Properties.

12. Town of Gilford Code Enforcement records indicate that in the fall of 2002, N.E. Atwater Morin, LLC had begun development and had constructed foundations on the Properties.

13. On May 6, 2005, DES personnel from the Watershed Management Bureau investigated a complaint of turbid water in Poor Farm Brook at Ellacoya State Beach and documented the following:

- a. Turbidity was traced to a backhoe re-directing an intermittent stream through an unstable channel around an unfinished house on Lot 130.
- b. Below the project, turbidity was observed along approximately 900' of the intermittent stream, down to its convergence with Poor Farm Brook, and then along approximately 4000' of Poor Farm Brook to Ellacoya State Beach, where the brook flows into Lake Winnepesaukee.
- c. Near a culvert under Cumberland Road, approximately 300' downstream from the project, the intermittent stream was "coffee colored (very turbid) and full of suspended sand and silt."
- d. A bridge worker repairing a bridge over the brook by Ellacoya State Beach stated that the turbidity issue had been observed all week.

14. During the May 6, 2005 inspection, DES staff spoke with the backhoe operator and asked him to stop work and take measures to control the turbidity. The operator said he would buy materials, including hay and filter fabric, to stabilize the site.

15. During the May 6, 2005 inspection, DES staff took water samples of the intermittent stream and Poor Farm Brook to be analyzed for turbidity. The normal background level for Lake Winnepesaukee is less than 1 NTU. The analyzed results were as follows:

- a. In the intermittent stream above the project = 0.12 NTU's
- b. In the intermittent stream below the project = 2332 NTU's
- c. In Poor Farm Brook above the confluence with the intermittent stream = 1.08 NTU's
- d. Downstream of the confluence and near Lake Winnepesaukee = 35.4 NTU's

16. Pursuant to RSA 485-A:8, II, Lake Winnepesaukee is a Class B water.

17. Pursuant to Env-Ws 1703.11(b), turbidity in naturally occurring Class B waters shall not exceed 10 NTU's of naturally occurring conditions.

18. RSA 485-A-13 states that it is unlawful for any person to discharge waste into surface waters of the state without a permit from DES. RSA 485-A defines sediment-laden water as waste.

19. On May 10, 2005, DES personnel from the DES Wetlands Bureau conducted a follow-up site inspection. During the inspection the following observations were made:

a. Three abutting properties were under development on Cheshire Circle: Lots 129, 130, and 131. At the top of Cheshire Circle, a stream flowing across Lot 131 was being directed through a driveway culvert into an unstable man-made channel on Lot 130, which continued down slope through Lot 129. Remnants of the existing stream channel were not evident on Lot 130 or Lot 129, but the existing stream channel was observed on the down slope side of Lot 129 below fill placed for development.

b. On Lot 130, a backhoe was operating in the man-made channel/rerouted stream (which measured approx. 200 linear feet). The channel was directing the stream around the backside of a partially constructed house and onto abutting Lot 129. Soil was eroding into the channel from a cut in the slope along the uphill side of the channel and a stone wall was under construction along the cut slope. Unstable piles of earth and building debris were evident throughout the site and all soils remained exposed. Three check dams had been installed in the channel, but no other erosion controls or stabilization methods had been utilized.

c. From Lot 130, the man-made channel/rerouted stream continued behind the house constructed on Lot 129 (for approx. 100 linear feet) and directed the water to a steep forested slope. Soil on lot 129 had been graded and remained exposed. Fill along approximately 60' of the northwestern boundary of Lot 129 was eroding down the forested slope and no erosion controls had been installed or stabilization methods implemented.

d. From Lot 129 the water flowed out of the man-made channel/rerouted stream down the steep forested slope through two properties. The existing stream channel was observed in a different location along the forested slope than where the man-made channel/rerouted stream flowed. At the bottom of the hill the flow met the original stream channel which then continued through a culvert under Cumberland Road. Sedimentation was observed throughout the forested slope, the natural stream channel, and the associated wetlands at the bottom of the hill, above the culvert.

20. The original stream that was rerouted measured at least 350 linear feet based on the distance between the original upslope undisturbed stream channel and the original down-slope undisturbed stream channel.

21. During the May 10, 2005 site inspection, the backhoe operator on-site informed DES personnel that he was working on Lot 130 for Christopher Bouchard and that he was sharing the backhoe with Tracy Atwater, the neighbor on Lot 129. He told DES staff that he was working in the man-made channel/rerouted stream, even though he had been told not to previously by DES personnel, because the uphill abutter was upset about work done along the property boundary/channel during stabilization efforts. He recalled that there had been erosion issues on Lot 129 and Lot 130 for over two years and that before the man-made channel was constructed,

water flowed in random channels over Lot 130 and then onto Lot 129. He also indicated that the large hole in front of the unfinished house on Lot 130 was for a septic system, as the approved system had to be moved due to the location of the channel.

22. During the May 10, 2005 site inspection, DES personnel also spoke with Vickie Atwater, who told DES personnel that Tracy Dale Atwater was her husband and was responsible for the earth moving work on Lot 129. She and her husband live in the house on Lot 129, which is owned by Terry Atwater, Tracy's brother. She indicated that the water flowed randomly over Lot 129 before the man-made channel was constructed.

23. During the May 10, 2005 site inspection, DES personnel issued a Wetlands Inspection Report to Mrs. Atwater for Lot 129 and to the backhoe operator for Lot 130. DES personnel reviewed the erosion control and stabilization methods to be implemented along with completion deadlines.

24. On May 12, 2005, the backhoe operator contacted DES personnel to indicate that he had been asked by the owner of Lot 130 to install siltation and erosion controls. He also stated that he had spoken with Tracy Atwater and had agreed to assist him with installation of siltation and erosion controls on Lot 129.

25. On June 22, 2005, DES personnel conducted a follow up inspection and found that the majority of requests made by DES in the May 10, 2005 Wetlands Inspection Reports were not completed. Silt fences and hay bales had been installed but not maintained and were overrun with silt and effective stabilization measures had not been implemented.

26. Review of DES Subsurface Systems Bureau records indicate that DES issued Construction Approval CA2003057721 to "T. Dale Atwater" for a septic system on Lot 129 on October 30, 2003 and Operational Approval for the system on February 4, 2004. The approved plan does not represent the man-made channel/re-routed stream channel. Because of the current location of the man-made channel/re-routed stream is closer than 75' from the leach bed; the system does not meet the set back requirements of Env-Ws 1008.04.

27. DES records identify Tracy D. Atwater (Installer #4069) as the septic installer for the septic system on Lot 129.

28. Review of DES Subsurface Systems Bureau records indicate that DES issued Construction Approval CA2005072019 for a septic system to Christopher Bouchard on Lot 130 on May 17, 2005. The approved plan labels the man-made channel/re-routed stream as "seasonal runoff." To date DES has not issued operational approval for Lot 130.

29. On May 16, 2006 DES personnel inspected the properties and found that no additional stabilization measures have been implemented and that sediment and erosion control measures were unmaintained and ineffective. A heavy flow was observed in the stream channel below Lot 129 and turbidity was evident.

#### D. DETERMINATION OF VIOLATIONS

1. N.E. Atwater Morin, LLC, Tracy D. Atwater, Vickie M. Atwater, and Terry Atwater have violated RSA 482-A:3, I, by filling approximately 350' of an intermittent stream channel and re-routing the stream through a 300' man-made channel without a permit from DES.
2. N.E. Atwater Morin, LLC, Tracy D. Atwater, Vickie M. Atwater, and Terry Atwater have violated 482-A:3, I, by failing to adequately install and maintain erosion controls to protect wetlands and surface waters resulting in sedimentation of a wetland and stream channel.
3. JLM Builders, LLC has violated RSA 482-A:3, I, by allowing a violation of RSA 482-A to continue on Lot 130.
4. N.E. Atwater Morin, LLC, Tracy D. Atwater, Vickie M. Atwater, and Terry Atwater have violated RSA 485-A:17, by failing to comply with best management practices resulting in excessive turbidity to wetlands and surface waters.
5. N.E. Atwater Morin, LLC, Tracy D. Atwater, Vickie M. Atwater, and Terry Atwater have violated RSA 485-A:13, I, by discharging waste into the surface waters of the state without a permit from DES.

#### E. ORDER

Based on the above findings, DES hereby orders N.E. Atwater Morin, LLC, Tracy D. Atwater, Vickie M. Atwater, Terry D. Atwater, and JLM Builders of Hampton, LLC as follows:

1. **Immediately cease and desist** all activities on the Properties, except as necessary to stabilize the Properties pursuant to this Order. Where sediment deposition has occurred on abutting and/or downstream properties, obtain permission from the owners to access their properties in order to install erosion controls, stabilize exposed soils where necessary, and delineate wetlands.
2. **Within 20 days of the date of this Order** submit a temporary stabilization and erosion control plan (the "Stabilization Plan") for the Properties and adjacent properties to DES for review and approval. The Stabilization Plan shall be prepared by a Professional Engineer or a Certified Professional in Erosion and Sediment Control, shall include a schedule for implementing the measures described in the Stabilization Plan, and shall, at a minimum, call for the following measures to be implemented within 15 days of the date of DES approval of the Stabilization Plan:
  - a. Install temporary and permanent erosion control measures as necessary to stabilize the Properties and prevent further impacts to surface waters and wetlands; and
  - b. Install erosion control matting on all unstabilized or unvegetated slopes.

3. Implement the Stabilization Plan only after receiving written approval from DES and pursuant to the conditions required by DES.

4. **Within 40 days of the date of this Order**, submit to DES for review and approval a restoration plan (the "Restoration Plan") designed by a New Hampshire Certified Wetland Scientist ("CWS") or a Professional Engineer who has experience in stream restoration to restore/re-establish a functional stream channel through the Properties, re-establish the original hydrology off of the Properties, and to remove accumulated sediment by hand from the natural stream channel and wetlands down slope of Lot 129. The wetlands and surface waters shall be delineated by a CWS and the Restoration Plan shall be stamped by the CWS. The following shall be submitted with the Restoration Plan:

- a. Signed statements from abutting and/or downhill property owners acknowledging the issue at hand and giving permission for you to access their properties to install erosion controls, implement stabilization methods, delineate wetlands, and/or restore wetlands in accordance with a Restoration Plan Approval issued by DES.
- b. A plan with dimensions, drawn to scale, showing:
  - i. existing conditions, with wetland and surface water boundaries; and
  - ii. proposed conditions after re-establishing the jurisdictional areas.
- c. A detailed description of the proposed methods of erosion and sediment control, turbidity control, and stabilization of the restoration area (silt fence, check dams, geo-textile fabric etc.);
- d. A description and proposed planting plan for the stabilization and revegetation of the stream restoration area;
- e. A description of the proposed construction sequence and the methods to be used for accomplishing restoration, as well as an anticipated restoration compliance date;
- f. The anticipated dates for submission of a restoration completion report and at least two monitoring progress reports, completed by a NH Certified Wetland Scientist or Professional Engineer. The monitoring reports shall document the impact area over two successive growing seasons following completion of the restoration project.

5. Retain a NH Certified Wetland Scientist or a Professional Engineer to supervise the implementation of the Stabilization Plan and the Restoration Plan and to submit the restoration progress reports.

6. Implement the Restoration Plan only after receiving written approval from DES and pursuant to the conditions of DES.

7. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Stacey Herbold, Compliance Specialist  
DES Water Division  
PO Box 95  
Concord, NH 03302-0095  
Fax: (603) 271-6588  
email: sherbold@des.state.nh.us

#### F. APPEAL

Any person aggrieved by determinations D.1 through D.3 of this Order may request DES to reconsider the Order within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

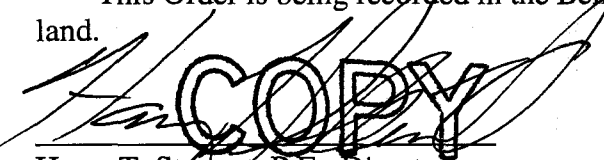
Any person aggrieved by determinations D.4 or D.5 of this Order may appeal to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

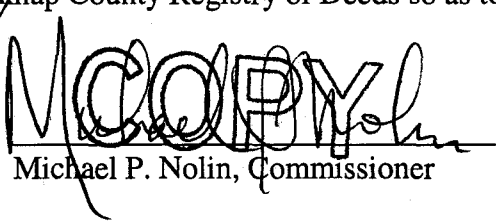
Filing an appeal or motion for reconsideration of the Order does not automatically relieve N.E. Atwater Morin, LLC, Tracy D. Atwater, Vickie M. Atwater, Terry D. Atwater or JLM Builders of Hampton, LLC of their obligation to comply with the Order.

#### G. OTHER PROVISIONS

Please note that RSA 485-A:22 and RSA 482-A:13 and RSA 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. N.E. Atwater Morin, LLC, Tracy D. Atwater, Terry D. Atwater, Vickie M. Atwater and JLM Builders of Hampton, LLC remain obligated to comply with all applicable requirements. DES will continue to monitor N.E. Atwater Morin, LLC, Tracy D. Atwater, Vicki Atwater, Terry D. Atwater, and JLM Builders of Hampton, LLC for compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Belknap County Registry of Deeds so as to run with the land.

  
Harry T. Stewart, P.E., Director  
Water Division

  
Michael P. Nolin, Commissioner

Certified Mail/RRR:



cc: ✓ Gretchen Hamel, DES Legal Unit Administrator  
Public Information Officer, DES Public Information Center  
Jennifer Patterson, Senior Asst. Attorney General, EPB, NHDOJ  
Belknap County Registry of Deeds  
Gilford Selectmen  
Gilford Planning Department  
Gilford Conservation Commission